

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, November 1, 2004

Division One

A105654 -- Lorraine Lewis v. Ali Mousavi

The order granting the petition for an injunction is affirmed. Plaintiff is awarded costs on appeal. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A102866 -- Kenneth David Beebe et al. v. Darrell J. Beasley et al.

The judgment is affirmed. The parties are to bear their own costs on appeal. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A106837 -- The People v. Jeffrey Yancey.

Accordingly, the order revoking appellant's probation and sentence imposed are affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Four

A106004 -- The People v. Joseph Alexander Bryant.

We order the judgment modified to reflect a violation of section 217.1, subdivision (a), not "217(a)." A corrected abstract of judgment shall be forwarded to the Department of Corrections. In all other respects, the judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Monday, November 1, 2004 (continued)

A103413 -- The People v. Russell Dwayne Rodgers.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A104449 -- In re Keivon W., a Person Coming Under the Juvenile Court Law. The People v. Keivon W.

The matter is remanded to the juvenile court to strike the gang conditions and delete the gang warnings. The matter is also remanded for recalculation of the maximum term of the confinement in accordance with the views expressed herein. In all other respects, the judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Tuesday, November 2, 2004

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., and Swager, J.; and B. Robbins, Deputy Clerk.

The Court called the cases of Peper v. Gannet Co, Inc. A102831 and A103464. Appellant Peper, in pro per, was not present and the cases were passed until later in the session.

A104802 Jim Broustis, et al.,
 v.
 Joel Drouet.
Cause called and argued by James Kraus, counsel for appellant, and Marc S. Janowitz, counsel for respondents. Cause ordered submitted.

A102831 Mark R. Peper,
A103464 v.
 Hearst Communications, Inc., et al.
Cause called and argued by Mark R. Peper, appellant in pro per, and Karl Olson for respondent Hearst Communications, Kellie L. Sager for respondent Los Angeles Times, et al., and Danielle Van Wert for respondent Knight Ridder, Inc. The Court denied appellant Peper's submission of new exhibits on October 25 and 26, 2004 and ordered the exhibits returned to appellant. Causes ordered submitted.

A105826 Northern California Carpenters Regional Council,
 v.
 Warmington Hercules Associates, et al.
Cause called and argued by Stephen Craig Hunter, counsel for appellants, and Patricia Gates, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Tuesday, November 2, 2004

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., and Swager, J.; and B. Robbins, Deputy Clerk.

- A104324 Janet Robbins,
v.
Joseph Alibrandi, et al.;
Angelo Perone, et al.
Cause called and argued by Charles D. Chalmers, counsel for appellant, and Frank Janecek, Jr., counsel for respondent Robbins. Jack Londen, counsel for respondent Alibrandi, and Robert Rosenfeld, counsel for respondent Bankamerica Corporation appeared and were available for questions, but did not argue. Attorney Chalmers submitted a new case cite to the Court. The Court advised respondents they may file a one-page response. Cause ordered submitted.
- A105155 The Pillsbury Company,
v.
Franchise Tax Board.
Cause called and argued by Kerne Matsubara, counsel for appellant, and David Lew, counsel for respondent. Cause ordered submitted.
- A104456 Bruce S. Portner,
v.
Jess Sullivan, et al.
Cause called and argued by Charity Kenyon, counsel for appellants, and Vernon L. Bradley, counsel for respondent. Cause ordered submitted.
- A104645 Vladimir Belinsky,
v.
BPM Goldman Financial Design, et al.
Cause called and argued by Dena L. Narbaitz, counsel for appellants, and Wayne Clayton, counsel for respondent. Cause ordered submitted.

Court recessed until Wednesday, November 3, 2004 at 9:00 a.m.

Tuesday, November 2, 2004 (continued)

Division Five

A105851 -- In re Carlos M., a Person Coming Under the Juvenile Court Law. The People v. Carlos M.

The orders of the juvenile court are affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Wednesday, November 3, 2004

Division One

A098935 -- The People v. Jeffrey Lee Duvardo.

The judgment of conviction is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A104730 -- In re Hannah R., a Person Coming Under the Juvenile Court Law. Contra Costa County Employment and Human Services Department, Children & Family Services v. Raymond R.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Thursday, November 4, 2004

Division Four

A099740 -- The People v. Byron Paul Van Boening.

The judgment is reversed and the matter remanded for proceedings consistent with the views expressed herein. If the proceedings called for in this opinion result in a determination that the Concord Police Department did not follow the practice appellant sought to establish, as described in part II of this opinion, the conviction on count one shall be reinstated. The abstract of judgment and minute order of August 1, 2002 shall be corrected to reflect that the prison term was imposed on count 2 rather than count 1. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Five

A104047 -- Jozef Czerski v. Yellow Cab Cooperative, Inc., et al.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Friday, November 5, 2004

Division Two

A104200 -- The People v. Alexander Gee.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A101011 -- The People v. Jose Francisco Guevara.

A105127 -- In re Jose Francisco Guevara on Habeas Corpus.

The cause is remanded for resentencing. In all other respects, the judgment is affirmed. By petition for writ of habeas corpus, defendant raises the issue of ineffective assistance of trial counsel. This petition is denied. Haerle, J. I Concur: Ruvolo, J. (See concurring opinion by Kline, P.J.) (Not for Publication.)

Division Four

A106888 -- In re J.B., a Person Coming Under the Juvenile Court Law. The People v. J.B.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

A102251 -- The People v. Mauricio Picado.

This matter is remanded to the trial court for correction of the abstract of judgment and recalculation of presentence credits, consistent with this opinion. In all other respects, the judgment is affirmed. The trial court is further directed to forward a copy of the corrected abstract of judgment to the Department of Corrections. Stevens, J. I Concur: Gemello, J. (See concurring and dissenting opinion by Jones, P.J.) (Certified for Partial Publication.)

Friday, November 5, 2004 (continued)

A104334/A105863 -- In re Roosevelt L., Jr., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Roosevelt L., Sr.

The orders of the trial court are affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

A106951 -- The People v. Fleming Smith, III.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Monday November 8, 2004

Division One

A105220 -- Reginald Jackson v. Health Net of California, Inc.

By the Court: The petition for rehearing is denied. Marchiano, P.J.

A104634 -- City of Vacaville v. Ron Pitamber et al.

The order appealed from is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A103073 -- The People v. Anthony Mack.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A104254 -- Richard McGreevy et al. v. Richard E. Thomas.

The judgment is affirmed. Thomas is to pay costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A104008 -- The People v. Ira Robertson.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A101084 -- The People v. Isreal Soria.

The cause is remanded to the trial court with directions to reconsider appellant's sentence in accordance with the views expressed herein. The judgment is otherwise affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Monday November 8, 2004 (continued)

Division Three

A107367 -- Jeffrey Thomas Gray v. The Superior Court of Napa County; Medical Board of California, R.P.I.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Division Four

A105092 -- In re Dawn S., et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children & Family Services v. Tracy W.

The venue transfer order is affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Tuesday, November 9, 2004

Division Two

A101610 -- The People v. Roy Edward Corpstein.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J.
(Not for Publication.)

A102395 -- The People v. James A. Henderson.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J.
(Not for Publication.)

Division Three

**A101318 -- In re S.J., a Person Coming Under the Juvenile Court Law.
The People v. S.J.**

The juvenile court's order committing S.J. to the CYA is affirmed.
McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Division Four

A106215 -- The People v. Tiffany Bronson.

The trial court is directed to modify the order of probation to reflect a term of 44 days in custody on the previously stayed term on count 1. In all other respects, the order is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A106866 -- In re Travis C., a Person Coming Under the Juvenile Court Law. The People v. Travis C.

We have reviewed the entire record before us and conclude that there are no arguable issues. Appellant was represented throughout the proceedings by his counsel. The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Rivera, J.
(Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, November 9, 2004

The Court convened at 9:30 a.m. at its courtroom located at 350 McAllister St., San Francisco, California. Present: Reardon, Acting P.J., Sepulveda, J. and Rivera, J.; Pamela Aguilar, Deputy Clerk; CHP Officer Vincent Chambers, Bailiff.

A105123 Tea Perry et al.
 V.
 Alameda County Social Services Agency et al.
Cause called. Kurt Robinson argued for appellants Perry et al. Rose Kwiatkowski and Roberta E. Albanian argued for respondents. Cause submitted.

A105160 Save Our Sunil, Inc.
 V.
 Mission Valley Rock Company et al.
Cause called. Stephan C. Volker argued for appellant Save Our Sunil, Inc. Peter Davis argued for respondents. Cause submitted.

At this point, the Court reconstituted itself to include: Reardon Acting P.J. and Sepulveda, J. Counsel orally waive Justice Kay's appearance on the bench.

A104832 Michael Malcolm
 v.
 Joy Malcolm
Cause called. J.W. Kinnear argued for appellant Michael Malcolm. Daniel Asimon argued for respondent. Cause submitted.

A106248 Silvester M. Rabic
 v.
 Philip G. Constantino
Cause called. Appellant Silvester M. Rabic argued on his own behalf. David McKim argued for respondent. Cause submitted.

At this point, the Court reconstituted itself to include: Sepulveda, Acting P.J. and Rivera, J. Counsel orally waive Justice Kay's appearance on the bench.

A105764 In re Juan Arevalo, on Habeas Corpus

Cause called. Michael Satris argued for petitioner Jackson. Krista Pollard argued for respondent. Cause submitted.

The Court adjourned at 11:47 a.m.

Tuesday, November 09, 2004

Division Five

A105514 -- In re Oliver E., et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Department of Employment and Human Services v. Olivia O.

The disposition order is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A104976 -- The People v. Aaron Timms.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Wednesday, November 10, 2004

Division One

A105040 -- The People v. Joseph Lee Mazza.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A102831, A103464 -- Mark R. Peper v. Gannett Co., Inc., et al.

The orders granting the motions to strike and awarding attorneys' fees and costs are affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A103625 -- The People v. Jose Lopez Ceja.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A105325 -- In re Shaun J., a Person Coming Under the Juvenile Court Law. The People v. Shaun J.

The orders appealed from are affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A103548 -- The People v. Kenneth James Larkins.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A101572 -- Mose Stroughter, et al. v. State Farm Fire and Casualty Company, et al.

The portion of the judgment based on the trial court's order sustaining the demurrer is affirmed. The judgment in favor of Gordon is affirmed. The remainder of the judgment as to State Farm is reversed and remanded for further proceedings consistent with this opinion. The parties shall bear their own costs on appeal. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Wednesday, November 10, 2004 (continued)

Division Three

A106647 -- Carole Soffer v. Rene Peinado.

The appeal is dismissed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

A106530 -- The People v. Kelvin M. Stiles.

The judgment is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, November 10, 2004

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Parrilli, J., Pollack, J. and F. Abad, Deputy Clerk.

A101439 Rita Kharmats,
v.
Richard Cuneo, et al.
Cause called and argued by Albert Boasberg, counsel for appellant/cross-respondent, Mark Gibson, counsel for respondent/cross-appellant Marina Kasavin, and Jeffrey Buck, counsel for respondent Sandra Shefrin. Cause ordered submitted.

Justice Pollak left the benched and Justice Corrigan joined the bench.

A102688 540 9th Street Associates, LLC.,
v.
Foundation Constructors, Inc., et al.

A102021 Adams & Smith, Inc.,
v.
Superior Court of San Francisco County;
540 9th Street, LLC.
Cause called and argued by Greg Lippetz, counsel for appellant/real party in interest, Mark Rice, counsel for respondent Foundation Constructors, Inc., Kenneth Nellis, counsel for respondent State of California, and Joseph Wright, counsel for petitioner. Cause ordered submitted.

A104105 People of the State of California,

A104108 v.

A104119 Heritage Bail Bonds, et al.

Cause called and argued by Patricia Kramer, counsel for appellants, and Gregory T. Dion, counsel for respondent. Cause ordered submitted.

Justice McGuinness left the bench and Justice Pollak joined the bench. Justice Corrigan presided over the last case on calendar.

A103216 Aulola Pahulu, et al.,
v.
Ford Motor Company, et al.
Cause called and argued by Zachary Best, counsel for appellants, and Robert Spagat, counsel for respondents. Cause ordered submitted.

Court adjourned.

Wednesday, November 10, 2004 (continued)

Division Four

A104744 -- Steven L. Gomes et al. v. Ukiah Unified School District et al.

The judgment is reversed. The matter is remanded for further proceedings consistent with this opinion. Appellants shall recover their costs. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

A104871 -- Brian Pitnick et al. v. Kim L. Kuhlmann et al.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

A104115 -- The People v. Charles Benjamin Ford.

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

A106466 -- In re Troy N., a Person Coming Under the Juvenile Court Law. The People v. Troy N.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Wednesday, November 10, 2004 (continued)

A102541 -- Sherwood Partners, Inc. v. Zoro, L.L.C.

A103680 -- Sherwood Partners, Inc. v. Zoro, L.L.C.

The judgment in favor of Sherwood is reversed. The case is remanded to the trial court with instructions to enter a judgment in favor of Zoro. The order declining to award attorney fees to Sherwood is affirmed. Zoro shall recover its costs on this appeal. Jones, P.J. We Concur: Stevens, J., Gemello, J.

A103947 -- Evelyn Kottle Simmons, Daniel B. Spitzer v. Robert E. Ravenscroft.

The trial court award of sanctions is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Friday, November 12, 2004

Division One

A100109 -- The People v. Larry Gene Smith.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J.,
Swager, J. (Not for Publication.)

Division Three

**A106287 -- In re Ruben F., a Person Coming Under the Juvenile Court
Law. The People v. Ruben F.**

By the Court: The petition for rehearing is denied. McGuinness, P.J.

**A104305 -- In re Jonathan Q., a Person Coming Under the Juvenile
Court Law. Social Services Agency v. Kenneth Q.**

By the Court: The petition for rehearing is denied. Corrigan, Acting P.J.

Division Five

A103853 -- The People v. Elzie Elrico Haley.

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J.,
Gemello, J. (Not for Publication.)

Monday, November 15, 2004

Division One

A102389 -- The People v. Bridget Alvarez.

The judgment of conviction is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A107029 -- The People v. Jose Suarez-Garcia.

Appellant filed a timely notice of appeal from the judgment and sentence. Our independent review of the record reveals no arguable appellate issues. Accordingly, we affirm the judgment of the trial court. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A106529 -- The People v. Gladys Johnson.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A104447 -- In re Monique O., a Person Coming Under the Juvenile Court Law. The People v. Monique O.

Insofar as it sustains the allegation that appellant received stolen property in violation of Penal Code section 496, the judgment is reversed. In all other respects, the judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A105178 -- Surland Homes et al. v. Caliber One Indemnity Company et al.

The judgment is affirmed. Surland is to pay costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Monday, November 15, 2004 (continued)

Division Three

A104105, A104108, & A104119 -- The People v. Heritage Bail Bonds, et al.

The order taxing costs is affirmed. Respondent shall recover its costs on appeal. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A105513 -- In re Matheau C., a Person Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. Wendy H.

The order is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A105284, A105285 -- Concord Communities, L.P. v. City of Concord.

We affirm the order denying Communities' request to stay operation of the Ordinance. (Nos. A105284, A105285.) Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

A104965, A106082 -- Baby Armando Doe, a Minor, etc. v. Diana Bontà, Director, etc.

The judgment is reversed and the matter remanded to the trial court with directions to enter a judgment denying the petition. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Certified for Publication.)

A104437 -- The People v. Roger Allen Marney.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

A106138 -- Kor Minton v. Catherine Trahan et al.

In light of this conclusion, Minton's additional arguments need not be addressed. The summary judgments in favor of respondents are reversed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Monday, November 15, 2004 (continued)

A106248 -- Silverster M. Rabic v. Philip G. Constantino.

We affirm the order denying Rabic's petition to restrain Constantino and reverse the protective order against Rabic as well as the order for attorney fees subsumed therein. These matters having resulting in a draw, there is no prevailing party entitled to attorney fees and court costs. (Code Civ. Proc., § 527.6, subd. (i).) Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Tuesday, November 16, 2004

Division One

A102389 -- The People v. Bridget Alvarez.

By the Court: Order Modifying Opinion. It is ordered that the opinion filed herein on November 15, 2004, be modified as follows: (See order.) This modification does not effect a change in judgment. Marchiano, P.J. (Not for Publication.)

A103519 -- The People v. Devry John Reed.

We further conclude the defendant's prior convictions and poor performance on parole justified the selection of upper and consecutive terms, which we are convinced the trial court certainly would have imposed even without finding or considering any facts that require a jury trial under *Blakely*. Finally, the jury determined that defendant inflicted great bodily injury upon Lankford in finding the enhancement allegation true, and also found that defendant committed the vehicle code violations listed in the probation report as a circumstance in aggravation. "California courts have long held that a single factor in aggravation is sufficient to justify a sentencing choice, including the selection of an upper term" (*People v. Brown* (2000) 83 Cal.App.4th 1037, 1043.) Here, a multitude of aggravating circumstances established by persuasive and even undeniable evidence were not offset by any mitigating circumstances. Beyond any reasonable doubt we find that the same sentence would have been imposed upon defendant without any *Blakely* error. Thus, even if the trial court erred in finding some aggravating factors, the decision to impose upper and consecutive terms was constitutionally valid and not prejudicial to defendant. (See *People v. Burbine* (2003) 106 Cal.App.4th 1250, 1263-1264; *People v. Williams* (1996) 46 Cal.App.4th 1767, 1782-1783.) Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A099749 -- The People v. Danny Lamont Hamilton.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Tuesday, November 16, 2004

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Ruvolo, J., and I. Santos, Deputy Clerk.

A103481 People for the Ethical Treatment of Animals, Inc., et al.,
v.
California Milk Advisory Board.
Cause called and argued by Matthew Penzer, counsel for appellant, and Tiffany Yee, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Ruvolo left the bench and Justice Lambden joined the bench to participate in the remainder of the cases.

A107469 Kimberly M.,
v.
Superior Court;
Social Services Agency et al.
Cause called and argued by Margaret Law, counsel for appellant, and Julie Werbel, Deputy County Counsel, (via teleconference), counsel for respondent. Cause ordered submitted.

A104308 In re Aubrey H., a Person Coming Under the Juvenile Court Law.
The People,
v.
Aubrey H.
Cause called and argued by Thomas Osha Neumann, counsel for appellant, and Nancy Tung, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A103610 Amy Jane Leonhardt,
v.
American Telephone & Telegraph Co. et al.
Cause called and argued by Eugene Stuart, counsel for appellant, Robert

Phillips, counsel for respondent. Cause ordered submitted.

A105857 Javier Rice Trujillo,
 v.
 Department of Motor Vehicles.
Cause called and argued by Paul Burglin, counsel for appellant, and Lyn Harlan, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Haerle, Acting P.J, Lambden, J., Ruvolo, J., and I. Santos, Deputy Clerk.

A104646 Robert W. Perrott et al.,
 v.
 Wells Fargo Bank.
Cause called and argued by Richard Nixon, counsel for appellant, and Andrew Zabronsky, counsel for respondent. Cause ordered submitted.

A105003 Karen Swain et al.,
 v.
 Christian Lewis.
Cause called and argued by Jesse Ralph, counsel for appellant, and George Holland, counsel for respondent. Cause ordered submitted.

A105442 Frank Chou,
 v.
 Victoria L. Tseng.
Cause called and argued by Arthur Brunwasser, counsel for appellant, and Tim Ness, counsel for respondent. Cause ordered submitted.

Court recess until Wednesday, November 17, 2004 at 9:30 a.m..

Tuesday, November 16, 2004 (continued)

Division Three

A105153 -- Fidelity National Title Insurance Company v. Alan Marks.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

A105176 -- Suzan Hughes v. Conrad L. Klein.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

A101459 -- The People v. William Curtis Wilson.

The judgment is affirmed. Parrilli, J. I Concur: Corrigan, Acting P.J. (See concurring opinion by Pollak, J.) (Certified for Publication.)

Division Five

A103899 -- The People v. Changa Lake.

The judgment is affirmed. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication.)

Wednesday, November 17, 2004

Division One

A104802 -- Jim Broustis et al. v. Joel Drouet.

The order denying the anti-SLAPP motion to strike is reversed. The case is remanded to the trial court for a determination on the second step of the two-step anti-SLAPP process, as discussed in this opinion. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A103545 -- The People v. Kellie Marie Campedel.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A105035 -- The People v. Susan Patricia Hughes.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A104982 -- The People v. Gregory Stephen Malone.

Accordingly, we deny the petition and affirm the judgment of the trial court. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Wednesday, November 17, 2004

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P.J., Lambden, J., Ruvolo, J., and S. Wheeler, Deputy Clerk.

A101620 & The People,
A106524 v.
Anderson Purnell Thurston.
In re Anderson Purnell Thurston on Habeas Corpus.
Cause called and argued by Marylou Elin Hillberg, counsel for appellant, and Violet Lee, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A102477 Lucia B. Y. Lai,
v.
Bruce J. Levitz, et al.
Cause called and argued by Robert Rusky and Nelson Lam, counsel for appellant, and John Kao and Bruce J. Levitz, counsel for respondents. Cause ordered submitted.

A105280 Michael Dunn,
v.
County of Mendocino, et al.
Cause called and argued (via teleconference) by Michael Dunn, in pro per, and (via teleconference) Frank Edward Zotter, Deputy County Counsel, counsel for respondents. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P.J., Haerle, J., Ruvolo, J., and S. Wheeler, Deputy Clerk.

A105299 The People,
v.
Paul Eric Shea.

Cause called and argued by Richard Braucher, counsel for appellant, and Christina Vom Saal, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A104891 The People,
 v.
 Emanuel Simas Carvalho, Jr.
Cause called and argued by Satish Vallepalli, Deputy County Counsel, counsel for appellant, and Alan Charles Dell'Ario, counsel for respondent. Cause ordered submitted.

A102894 & The People,
A107371 v.
 Todd Phillip Wilkinson.
 In re Todd Phillip Wilkinson on Habeas Corpus.
Cause called and argued by Paul Richard Kleven, counsel for appellant, and Sharon Wooden, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A105783 Ronald Biles,
 v.
 Exxonmobil Corporation.
Cause called and argued by David Fiol, counsel for appellant, and Lynne Blair, counsel for respondent. Cause ordered submitted.

A103808 & John Penna,
A103997 v.
 Necati Ergur.
Cause called and argued by Duy Thai, counsel for appellant, and Randall Crane, counsel for respondent. Cause ordered submitted.

A104157 Sacramento County Attorneys Association,
 v.
 County of Sacramento, et al.
Cause called and argued by Timothy Talbot, counsel for appellant, and Krista Whitman, Deputy County Counsel, counsel for respondents. Cause ordered submitted.

COURT ADJOURNED.

Wednesday, November 17, 2004 (continued)

Division Three

A103216 -- Aulola Pahulu, et al. v. Ford Motor Company, et al.

The judgment is affirmed. Hertz shall recover its costs on appeal. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

Division Four

A107849 -- Grace B. v. The Superior Court of Alameda County, Alameda County Social Services, R.P.I. (Not for Publication.)

The petition is denied on the merits. (Cal. Rules of Court, rule 39.1B(o).) This decision is final immediately. (*Id.*, rule 24(a).) Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

A105671 -- Clear Channel Outdoor, Inc. v. Jacobs, Spotswood, Casper & Murphy, LLP.

The order is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A104709 -- The People v. Dana D. Hatch.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

A106280 -- Lillian Liang v. San Francisco Residential Rent Stabilization and Arbitration Board.

The purported appeal from the order denying the motion for reconsideration is dismissed. The order of dismissal is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Wednesday, November 17, 2004 (continued)

Division Five

A102719 -- The People v. David Franklin.

The matter is remanded for resentencing consistent with this opinion. The judgment is affirmed in all other respects. Stevens, J. I Concur: Gemello, J. (See concurring and dissenting opinion by Jones, P.J.) (Not for Publication.)

A103004 -- The People v. Benito Jose Rosales.

The judgment is reversed. The case is remanded for resentencing consistent with this opinion. Gemello, J. I Concur: Simons, J. (See concurring and dissenting opinion by Jones, P.J.) (Not for Publication.)

Thursday, November 18, 2004

Division One

Vladimir Belinsky v. BPM Goldman Financial Design, LLC, et al.

The trial court's November 17, 2003 order restoring this matter to the civil active list is vacated, and the matter is remanded to the trial court for further proceedings consistent with this decision. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

A106688 -- The People v. Darin William Carlton.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

A103380 -- The People v. Rafael Alejandro Noguez.

The judgment is modified to vacate the stays of the enhancements imposed under section 12022.53, subdivision (d), but is otherwise affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A105328 -- In re P.I., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Daniel I.

The purported aspects of this appeal are dismissed. In all other respects, the order terminating Daniel's parental rights is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Thursday, November 18, 2004 (continued)

Division Five

A105417 -- The People v. Bruce Mix.

The trial court is directed to prepare and forward to the Department of Corrections an amended abstract of judgment indicating that the sentence on count two is stayed and that the court imposed the lower terms for counts one and two. In all other respects, the judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

MINUTES

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday, November 18, 2004

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Simons, J., Gemello, J.; and Richard H. Sandvik, Deputy Clerk. All counsel stipulated to Stevens, J., hearing oral argument via recording.

A09663 The People
5 v.

Robert Carter Nawi

Cause called and argued by Colleen M. Rohan, counsel for appellant, and by Joan Killeen, counsel for respondent. Cause ordered submitted.

A10480 Troy McFadin
3 v.

Thomas Villanueva

Cause called and argued by John E. Jones, counsel for appellant, and by Adrea L. Goodman, counsel for respondent. Cause ordered submitted.

A10345 In re the Marriage of Carol and Richard Lam.
5 Carol Lam

v.

Richard Lam

Cause called and argued by Barry L. Siders, counsel for appellant, and by Richard Lam, respondent, appearing in pro per. Cause ordered submitted.

A10453 Lillie Ann Brown
6 v.

Barry D. Ammon

Cause called and argued by Barry D. Ammon, appellant, in pro per, and by Thomas V. Roland, counsel for respondent. Cause ordered submitted.

A10630

Lisa Honig

5

v.

San Francisco Planning Department et al.

David Robins et al.

Cause called and argued by Clifford E. Fried, counsel for appellant, and by Sarah E. Owsowitz counsel for respondents. Cause ordered submitted.

A10209 The People

1

v.

Andy Saberi

Pawan K. Garg

Cause called and argued by Xavier Lavoipierre, counsel for appellant, and by Larry Blazer, Susan H. Handeman and Matthew G. Dudley, counsel for respondents.

Cause ordered submitted.

A10254 Andy Saberi

3

v.

Shell Oil Co., Inc. et al.

Cause called and argued by Xavier Lavoipierre, counsel for appellant, and by Susan H. Handelman and Matthew G. Dudley, counsel for respondents. Cause ordered submitted.

A10346 Andy Saberi

3

v.

Shell Oil Co., Inc. et al.

Cause called and argued by Xavier Lavoipierre, counsel for appellant, and by Susan H. Handelman and Matthew G. Dudley, counsel for respondents. Cause ordered submitted.

Court is adjourned at 12:03 p.m.

Friday, November 19, 2004

Division One

A104728 -- The People v. Nicholas John Martinez, Jr.

The judgment is reversed. The matter is remanded to the trial court for further proceedings consistent with *Blakely*. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A107469 -- Kimberly M. v. The Superior Court of Mendocino County; Mendocino County Department of Social Services, R.P.I.

Let a writ issue directing respondent juvenile court to strike its August 4, 2004 jurisdictional findings as to petitioner, under section 300, subdivision (g), to vacate its August 4, 2004 order sustaining the petition as to petitioner, and to set aside its order setting the section 366.26 hearing for December 2, 2004. The matter is remanded to the juvenile court for further proceedings in accordance with the views expressed in this opinion. This decision is final as to this court immediately. (Rule 24(b)(3).) Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Four

A102392 -- The People v. Randall Hall.

The matter is remanded with directions to the court to reconsider defendant's motion to dismiss the charge pursuant to section 1210.1, subdivision (d) in light of this court's opinion. In all other respects, the judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A105160 -- Save Our Sunol, Inc. v. Mission Valley Rock Company et al.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Certified for Publication.)

Friday, November 19, 2004 (continued)

Division Five

A103268 -- Patricia M. Carey v. Morris D. Carey, Jr.

The order filed May 14, 2003 denying Patricia's request to sell the Norine Drive property is reversed in part, and remanded for the court to order an independent appraisal of the property and to reconsider whether Morris holds any equity in the residence. In all other respects, the order is affirmed. Each party to bear its own costs on appeal. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Monday, November 22, 2004

Division One

A105826 -- Northern California Carpenters Regional Council et al. v. Warmington Hercules Associates et al.

The order denying the motion under Code of Civil Procedure section 425.16 is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Certified for Publication.)

A107850 -- Lynda O. v. The Superior Court of Contra Costa County; Contra Costa County Children and Family Services Bureau, R.P.I.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) This section 366.26 hearing is set for December 1, 2004. Therefore, our decision is final in this court immediately. (Cal. Rules of Court, rule 24(b)(3).) Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A107885 -- J. Christopher Schroll v. The Superior Court of San Mateo County; First Virtual Properties, LLC, et al., R.P.I.

The Court:* Let a peremptory writ of mandate issue, commanding respondent, County of San Mateo Superior Court to set aside its August 16, 2004 order imposing sanctions in case No. 106828, and to instead deny the motion for sanctions. Pending issuance of the remittitur here, the sanctions order is stayed. This decision is final as to this court immediately. (Cal. Rules of Court, rule 24(b)(3).) Petitioner shall recover his costs. (Not for Publication.)

*Before Marchiano, P.J., Swager, J., and Margulies, J.

Division Two

A105161 -- The People v. Duro Andre Dennis.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Monday, November 22, 2004 (continued)

Division Three

A102021 -- Adams & Smith, Inc. v. The Superior Court of the City and County of San Francisco; 540 9th Street Associates, LLC, R.P.I.

A102688 -- 540 9th Street Associates, LLC v. Foundation Constructors, Inc. et al.

As to the appeal in A102688, the judgment is affirmed. As to the petition for writ of mandate in A102021, a peremptory writ of mandate shall issue, directing respondent superior court to vacate its order denying petitioner Adams & Smith's motion for summary judgment and to enter a new and different order granting the motion. The stay of all proceedings in the trial court previously issued by this court in A102021 shall be dissolved upon the issuance of the remittitur. Respondent Caltrans and Foundation shall recover their costs of appeal in A102688, and petitioner Adams & Smith shall recover its costs in the writ proceeding in A102021. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A104538 -- Deloris Allen v. City of Oakland, et al.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

A105758 -- The People v. Eric Deshoun Crawford.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A101439 -- Rita Kharmats v. Richard Cuneo, et al.

The judgment in favor of Sharon Shefrin is affirmed. The appeals from the judgment of nonsuit in favor of defendants Richard Cuneo, Patrick Taylor, Judy Silverman, and Marina Kasavin, the order denying plaintiff's motion for leave to augment expert witness disclosure statement, and the order denying plaintiff's motion to continue the trial, are dismissed. The cross-appeals of defendants Richard Cuneo, Patrick Taylor, Judy Silverman, and Marina Kasavin from the orders denying their motions for summary judgment are dismissed as moot. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Tuesday, November 23, 2004

Division One

A103272 -- Emilio Guerrero v. University of San Francisco et al.

A102864 -- Emilio Guerrero v. Elaine Oyler.

The judgments are affirmed. Respondents are awarded their costs on appeal. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A105756 -- The People v. Robert S. Hughes.

Accordingly, the upper term sentence of eight years imposed upon count 1 is vacated and the case is remanded to the trial court for the limited purpose of conducting sentencing proceedings in accordance with the requirements of *Blakely*. Our review of the record reveals that the abstract of judgment does not reflect the order requiring AIDS testing. The trial court is directed to amend the abstract of judgment to include the testing required by section 1202.1, and to then forward a copy of the amended abstract of judgment to the California Department of Corrections. In all other respects the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A105579 -- In re Dante K., a Person Coming Under the Juvenile Court Law. The People v. Dante K.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A101485, A102094 -- Robert S. Kolodge v. Michael E. Boyd.

The judgment as to damages and costs is affirmed. That portion of the judgment awarding interest on damages from February 27, 1997 to the date of entry of judgment is stricken. Boyd is awarded costs on appeal. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Tuesday, November 23, 2004 (continued)

Division Three

A106206 -- In re Raymond C., a Person Coming Under the Juvenile Court Law. The People v. Raymond C.

The orders of the juvenile court are affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A105849 --In re H.K., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Children and Family Services v. Lara K.

The orders sustaining the juvenile dependency petition as to H.K. and adjudging her a dependant child are affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication.)

A105037 -- The People v. Matthew Verne Knope.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A101617 -- The People v. Debra S. Lyons.

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

A103813 -- R.M. Harris Company, Inc. v. Washington International Insurance Company.

The superior court's order awarding attorney fees to Washington is therefore affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

A104832 -- In re the Marriage of Joy C. Malcolm and Michael A. Malcolm.

The trial court's order denying the motion for modification of the stipulated confidentiality order is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Tuesday, November 23, 2004 (continued)

A104734 -- Vodafone Americas, Inc. v. Collins Flannery.

The order granting defendant's petition to vacate the arbitration award is reversed. The trial court is directed to vacate said order and deny the petition. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, November 23, 2004

The Court convened at 9:30 a.m. at its courtroom located at 350 McAllister St., San Francisco, California. Present: Kay, P.J., Reardon, J., and Rivera, J.; Pamela Aguilar, Deputy Clerk; CHP Officer Leland Thomas, Bailiff.

A103258 People
 V.
 Russell Jorge Pliego
Cause called. John D. Randolph argued for appellant Pliego. Ryan B. McCarroll argued for respondent. Cause submitted.

At this point, the Court reconstituted itself to include: Kay, P.J., Reardon, J. and Sepulveda, J.

A097793 State of California et al.
 V.
 Old Republic Title Company et al.
Cause called. Peter Davis argued for appellants/cross-respondents Old Republic Title Company et al. Donald Margolis and Niall McCarthy argued for respondents/cross-appellants. Cause submitted.

A095918 State of California et al.
 v.
 PricewaterhouseCoopers, LLP et al.
Cause called. David Newdorf argued for appellants/cross-respondents State of California et al. Joel S. Sanders argued for respondents/cross-appellants. Cause submitted.

The Court recessed at 11:13 a.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, November 23, 2004

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kay, P.J., Reardon, J., and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Officer Leland Thomas, Bailiff.

A104018 People
 v.
 Clay MacDonald
Cause called. Robert Wayne Gehring argued for appellant MacDonald. Martin S. Kaye argued for respondent. Cause submitted.

A104958 Marisa Villanueva Paramour
 v.
 Rui Xiong Ruan
Cause called. Steven R. Rhoads argued for appellant Paramour. Gregory P. Brock argued for respondent. Cause submitted.

A104171 Theodore Tarver, Jr.
 v.
 City and County of San Francisco
Cause called. Lawrence Murray argued for appellant Tarver. Lisa Berkowitz argued for respondent. Cause submitted.

For the next cause, the Court reconstituted itself to include Reardon, Acting P.J., Sepulveda, J., and Rivera, J.

A101434 North Pacifica
 v.
 California Coastal Commission
Cause called. Keith Fromm and Jacqueline Pope argued for appellant North. Joel Jacobs argued for respondent. Natalie West appeared for real party in interest City of Pacifica. Cause submitted.

The Court adjourned at 2:55 p.m.

Tuesday, November 23, 2004 (continued)

Division Five

A106147 -- The People v. Bassam E. Haddad.

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Stevens, J.
(Not for Publication.)

A105780 -- Edward Reidy, as Trustee, etc. v. City and County of San Francisco et al.

By the Court: Order Modifying Opinion and Denying Rehearing.

The opinion in the above-entitled matter filed on October 26, 2004, is modified as follows: (See order.) This modification does not change the judgment. The City's petition for rehearing is denied. Jones, P.J. (Certified for Partial Publication.)

Wednesday, November 24, 2004

Division One

A104766 -- The People v. Artemio Ayala Gonzalez.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

A106086 -- In re Nancy G., a Person Coming Under the Juvenile Court Law. Marin County Department of Health and Human Services v. Norma G.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A103794 -- The People v. Barbara Ann Mennona.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A106961 -- The People v. Lori Ann Ventimiglia.

Accordingly, we deny the petition and affirm the judgment of the trial court. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, November 24, 2004

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Corrigan, J., Pollack, J. and F. Abad, Deputy Clerk.

A100633 Lucinda Hampton,
v.
Evelyn Schiappacasse.
Cause called and argued by James Kraus, counsel for appellant/cross-respondent, Lawrence Alioto, counsel for respondent/cross-appellant. Cause ordered submitted.

Justice McGuiness left the benched and Justice Parrilli joined the bench. Justice Corrigan presided over the remainder of the calendar.

A101085 The People,
v.
Glen Douglas Smith.
Cause called and argued by Edward Hoffman, counsel for appellant, Ayana Cuevas, counsel for respondent. Cause ordered submitted.

Court adjourned.

Wednesday, November 24, 2004 (continued)

Division Five

A101456 -- The People v. Thomas Stephen Gunn.

The judgment is affirmed. The trial court is directed to send amended abstracts of judgment to the Director of Corrections specifying that the determinate and indeterminate sentences are to be served concurrently. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)

A103135 -- Jamel Sanders v. Daniel Nackerman, Director of the City of Richmond, California, Housing Authority.

We affirm the trial court order denying Sanders' request for attorney fees. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication.)

Monday, November 29, 2004

Division One

A104752, A105517 -- Rene Jepsen, a Minor, etc. v. Carol Ekelund.

A104753, A105515 -- Carol Ekelund v. Rene Jepsen, a Minor, etc.

We reverse the order entered in open court on November 12, 2003, in favor of Ekelund and against Jepsen and the order awarding attorney fees entered on January 22, 2004, in the amount of \$5,000. The other orders subject to appeal are affirmed. The parties shall bear their own costs on appeal. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

A105598 -- The People v. Salim Mojaddedi.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A105699 -- Putnam Buick, Inc. v. Jeremy M. Crossman.

The judgment is reversed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A104218 -- The People v. Sam W. Chappelle.

The judgment of conviction is affirmed. The matter is remanded for resentencing for the trial court to decide whether to exercise its discretion under Penal Code section 1385 with regard to the Health and Safety section 11370.2 enhancement. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A103670 -- The People v. Anthony Plascencia.

The judgment is affirmed, except the trial court is directed to correct appellant's probationary period so that it begins on the date it was initially imposed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Monday, November 29, 2004 (continued)

Division Three

A107030 -- The People v. Martin Herrera-Hernandez.

The judgment is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

Division Five

A106471 -- In re Luke B., a Person Coming Under the Juvenile Court Law. Mendocino County Department of Social Services v. Kimberly B.

The orders denying appellant's section 388 petition and terminating her parental rights are affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A104536 -- Lillie Ann Brown, et al. v. Barry D. Ammon.

The order granting plaintiffs' motion for leave to file an amended complaint is affirmed. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Tuesday, November 30, 2004

Division One

A105042 -- The People v. Edgar Lance Oliver.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Certified for Publication.)

A104692 -- Ladonna Roman v. Robert Griffin.

The trial court's judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Three

A100633 -- Lucinda Hampton v. Evelyn Schiappacasse.

The order granting leave to amend as to the first two causes of action is reversed. The order striking the first, second, and third causes of action is affirmed. The order denying the motion to strike the fourth cause of action is reversed. The case is remanded to the trial court with directions to grant the special motion to strike as to all causes of action, without leave to amend. Costs to appellant. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A104568 -- The People v. Fredi Orozco Lua.

The matter is remanded to the superior court for the purpose of correcting the abstract of judgment to reflect that in case No. 108879 defendant was convicted of assault by means of force likely to produce great bodily injury, and in all other respects the judgment is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

A101085 -- The People v. Glen Douglas Smith.

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Tuesday, November 30, 2004 (continued)

Division Four

A104652 -- The People v. Jerry Jackson.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J.
(Not for Publication.)

A104958 -- Marissa Villanueva Paramour v. Rui Xiong Ruan.

The order is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J.
(Not for Publication.)

A105123 -- Tia Perry et al. v. Alameda County et al.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J.,
Sepulveda, J. (Not for Publication.)

A104018 -- The People v. Clay Lewis MacDonald.

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda,
J. (Not for Publication.)

Division Five

A105444 -- Anthony Cadlo et al. v. Owens-Illinois, Inc.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J.
(Not for Publication.)

A104654 -- The People v. Chestzley Celestine.

The appeal is dismissed. Jones, P.J. We Concur: Simons, J., Gemello, J.
(Not for Publication.)

**A105451 -- In re Lennis G., a Person Coming Under the Juvenile Court
Law. The People v. Lennis G.**

The order of the juvenile court is affirmed. Stevens, J. We Concur: Jones,
P.J., Simons, J. (Not for Publication.)

Tuesday, November 30, 2004 (continued)

A103455 -- In re the Marriage of Carol A. and Richard C. Lam.

The order is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J.
(Not for Publication.)

A104589 -- The People v. Vinnie Sharper, Jr.

The order revoking probation is affirmed. Jones, P.J. We Concur:
Simons, J., Gemello, J. (Not for Publication.)